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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RUSSHAYIA EDWARDS,

Defendant and Appellant.

A146222

(Solano County
Super. Ct. No. FCR312635 FF)

Defendant Russhayia Edwards appeals from a judgment of conviction and sentence following a jury trial. Her counsel has raised no issues and asks this court for an independent review of the record to determine whether there are any issues that would, if resolved favorably to defendant, result in reversal or modification of the judgment. (*People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436; see *Smith v. Robbins* (2000) 528 U.S. 259.) Counsel notified defendant that she may file a supplemental brief with the court, but defendant did not submit her own brief. Upon independent review of the record, we conclude no arguable issues are presented for review and affirm the judgment.

BACKGROUND

Defendant was charged by information with first degree burglary in violation of Penal Code¹ section 459. It was alleged the offense constituted a violent felony within the meaning of section 667.5, subdivision (c) because another person, other than an

¹ All statutory references are to the Penal Code.

accomplice, was present in the residence during the commission of the burglary. It was also alleged that, pursuant to section 462, subdivision (a), probation should not be granted unless it was found this was an unusual case where the interests of justice would best be served if defendant was granted probation. Finally, it was alleged defendant was not eligible to be sentenced to a term of imprisonment in the county jail. (§§ 1170, subds. (f), (h)(3); 1385.) Defendant pleaded not guilty to the charge and denied the enhancement allegations.

A one-day trial was held on May 4, 2015. The People called Juana Perez Ramirez, the victim; Nestor Hidalgo Cruz, Ramirez's husband; and Fairfield Police Officer Seth Jamel. Defendant testified on her own behalf.

Ramirez testified she was taking a nap in her home in Fairfield on February 3, 2015, when she was startled by the sound of someone opening the door to her residence. Ramirez saw defendant in the apartment holding Ramirez's cell phone, which had been charging in the kitchen. Ramirez told defendant that was her cell phone. Defendant responded it was her phone, and then left. Ramirez followed defendant for about 20 minutes and asked a bystander to call the police. Officer Jamel apprehended defendant and presented Ramirez with a cell phone, which she identified as hers.

Officer Jamel testified that, on the day of the incident, he responded to a call that an Hispanic female was chasing a Black female who had stolen her phone. When Jamel arrived at the scene, Ramirez told him the suspect was in the parking lot of the Fairfield-Suisun School District maintenance yard. Jamel found defendant in the yard, hiding behind a red pickup truck. Upon searching the area, Jamel found Ramirez's cell phone.

Cruz testified he had never seen defendant before, did not give her permission to enter his home, and had never had sex with her.

Defendant testified that, about a month before the incident, she had sex with Cruz in his home in exchange for money. About two weeks later, defendant stopped by Cruz and Ramirez's home and again had sex with Cruz for money. She claimed she tried to visit Cruz a third time on the day of the incident, and found Ramirez in the house. When Ramirez confronted her, defendant purportedly said: "Oh, my. I'm sorry. I'm a friend

of your husband.” Scared that Ramirez would call the police, defendant grabbed her cell phone and ran away. Defendant conceded she told several lies after she was apprehended by the police. Among other things, defendant falsely claimed she did not steal the cell phone and she had been talking with Cruz outside the apartment immediately before the theft. Defendant claimed she did not want the police to think she entered the house to steal anything.

Before the case was submitted to the jury, the prosecution asked for an instruction that would have allowed the jury to convict defendant on the alternative theory she did not form the intent to commit burglary before entering the building, but she did form that intent before she entered the kitchen, where the cell phone was taken. The court refused to give the instruction because the apartment was a one-bedroom, and there did not appear to be any doors closing off the kitchen such that Ramirez would have had an additional expectation of privacy in that room.

After the case was submitted, the jury sent a written question to the court stating: “Please confirm are lesser charges included if our verdict is not guilty? Will other charges be brought against the defendant? i.e. petty larceny included if not guilty?” The court responded: “No, there are no lesser included charges. Nor will any other charges be brought against the defendant based on these facts.” The jury also asked to review the testimony of Ramirez, which the court provided. The jury ultimately found defendant guilty of first degree burglary with a person present.

Defendant submitted a statement in mitigation, requesting the court consider sentencing her to probation and a sentence of 240 days in county jail. The probation report indicated defendant incurred the instant conviction while on probation for misdemeanor offenses, she had suffered recent arrests for drug-related offenses, and she was ineligible for probation unless unusual circumstances existed. Nevertheless, the probation department recommended defendant be granted probation with various terms and conditions.

At sentencing, the trial court suspended the imposition of judgment and sentence, and placed defendant on formal probation for three years. In trailing misdemeanor cases,

the court terminated defendant's probation as unsuccessful. As to the instant action, the court sentenced defendant to 246 days and gave her credit for 246 days time served. The court also ordered defendant to pay restitution, and retained jurisdiction for the purposes of enforcing the restitution order. The court set forth various conditions of probation, including that defendant was to obey all laws, she was not to leave the state without the permission of her probation officer, she was to abstain from the use of illegal drugs and submit to testing, and she was not to own or have possession of firearms or dangerous or deadly weapons or any ammunition.

DISCUSSION

Having independently reviewed the entire record, we conclude defendant was ably represented by counsel, there are no arguable issues that would result in a disposition more favorable to defendant, and there are no issues requiring further briefing.

DISPOSITION

The judgment is affirmed.

Margulies, J.

We concur:

Humes, P. J.

Dondero, J.

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